

Decision 01-02-072 February 22, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into
Implementation of Pub. Util. Code § 390.

Rulemaking 99-11-022
(Filed November 18, 1999)

INTERIM OPINION

Qualifying Facilities that exercised their one-time option to switch to Power Exchange pricing shall be paid short-run avoided cost payments based on the Transition Formula adopted in D.96-12-028, or as modified, for power produced as of January 19, 2001.

Procedural Background

In Decision (D.) 99-11-025, we set forth procedures for Qualifying Facilities (QFs) to exercise a one-time option to elect to receive energy payments based on the Power Exchange (PX) market-clearing price pursuant to Pub. Util. Code § 390(c).¹ Until such time as the Commission has adopted a PX-based price, QFs who exercised this option have been paid subject to true-up. Because we have not yet adopted a PX-based price, the true-up remains in place. We authorized the utilities to establish tracking accounts to track PX-based payments to QFs that exercised the one-time option in order to aid calculation of a true-up, should one

¹ All statutory references are to the Public Utilities Code, unless otherwise noted.

occur. We established that any amount subject to true-up would earn the short-term commercial interest rate.

D.99-11-025 adopted the PX day-ahead zonal market-clearing price as the basis for payments for QFs exercising their one time switch option. The day-ahead zonal market-clearing price was selected because it held the most significant volumes, PX tariffs and protocols provided for transparent pricing in that market, and a single market price was administratively simple.

Unless a QF has made this election, short run avoided cost (SRAC) energy prices paid by public utilities are based upon a benchmark energy price adjusted for changes over time in a gas index, as described in Pub. Util. Code § 390(b). D.96-12-028 implemented the approach spelled out in § 390(b). The SRAC formula is known as the Transition Formula.

On January 10, 2001, Pacific Gas and Electric Company (PG&E) filed an emergency motion seeking a stay of D.99-11-025 and resolution of the true-up issue. On January 11, 2001, Commissioner Wood issued an Assigned Commissioner Ruling (ACR) imposing a moratorium on the ability of QFs to switch to PX pricing under § 390(c) and setting other aspects of PG&E's motion for comments. Comments were filed on January 24, 2001 by the Independent Energy Producers Association (IEP), California Cogeneration Council (CCC), Calpine Corporation (Calpine), and San Diego Gas & Electric Company (SDG&E). PG&E and CCC filed reply comments on January 31, 2001.

Motion

The PG&E motion sought two immediate actions: suspension of QFs' ability to switch to PX pricing and adoption of an alternative payment basis for QFs that switched, on a going-forward basis. IEP argues that, as a matter of fact, QFs can no longer be paid based on the PX price after January 19, 2001 because of

the status of PX operations and therefore recommends that QF production after January 19, 2001 should be paid based on the Transition Formula. CCC supports using the Transition Formula for payments after January 31, 2001.

The most controversial aspect of the motion deals with PG&E's request for an immediate true-up of payments made to switching QFs since June 2000. PG&E requests that payments be trued-up to Transition Formula energy rates, or, in the alternative, capping of payments at \$67.45/megawatt-hour (MWh). PG&E argues that its current financial situation, described by its Director of Business and Financial Planning in a declaration, requires immediate action on the part of the Commission to reduce its payment obligations to QFs. PG&E would accomplish this by eliminating the ability of QFs to switch to PX pricing and to reduce past payments in reliance on the true-up provisions in D.99-11-025.

Calpine argues that D.99-11-025 limited the possibility of implementing a true-up of the PX price to consideration of other market clearing prices and the determination of capacity value as provided in § 390(d). Calpine argues that the Commission's intent was to adjust the payments to QFs who utilize the one time switch option compared to the methodology ultimately adopted pursuant to § 390, not on a *de novo* basis. CCC filed similar comments.

We will not take up the question of whether or how to implement a true-up consistent with D.99-11-025 at this time but will instead consider it in a future decision.

Discussion

On January 31, 2001, the PX day-ahead market ceased operation. Functionally, QFs can no longer switch to PX pricing because the PX no longer exists. The marketplace has already accomplished suspension of that option. However, we take this opportunity to affirm the ruling by Assigned

Commissioner Wood implementing a moratorium on this option on January 11, 2001.

Next, QFs who exercised their one-time option to switch to PX pricing prior to January 11, 2001, cannot be paid as set forth in D.99-11-025 from January 31, 2001 forward, as the PX day-ahead market no longer exists. In addition, effective January 19, 2001, the PX notified PG&E that it would no longer be able to trade in the PX day-ahead market without posting collateral. Prior to exercising the one time switch option, such QFs were paid pursuant to the Transition Formula adopted in D.96-12-028. Since the PX day-ahead market is no longer operational, all QFs paid short-run avoided costs should once again receive payments based on the Transition Formula adopted in D.96-12-028, or as modified. Although this decision might once have been controversial, cessation of PX day-ahead market operations makes this a logical outcome and we adopt it, effective January 19, 2001.

Comments on Draft Decision

The draft decision of ALJ Cooke in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Rule 77.7(f)(9) provides for reduction or waiver of the 30-day period for public review and comment when public necessity requires such reduction. We must balance whether the public necessity of adopting an order outweighs the public interest in having the full 30-day review and comment. We are convinced that this draft decision falls under Rule 77.7(f)(9), and for that reason, we established a shortened period for comments on the draft decision.

Comments were filed by IEP, Calpine, and the Office of Ratepayer Advocates. All commentators support adoption of the draft decision. Calpine

clarifies its position that the moratorium on switching should be eliminated in the future. We have made no modifications as a result of the comments.

Finding of Fact

1. The PX notified PG&E that it would no longer be able to trade in the PX day-ahead market without posting collateral effective January 19, 2001.
2. The PX ceased day-ahead market operations effective January 31, 2001.
3. QFs who exercised their one-time option to switch to PX pricing prior to January 11, 2001, cannot be paid as set forth in D.99-11-025 from January 31, 2001 forward, as the PX day-ahead market no longer exists.

Conclusions of Law

1. QFs should not be able to switch to PX pricing under § 390(c) effective January 11, 2001.
2. QFs who exercised their one-time option to switch to PX pricing prior to January 11, 2001, should be paid for their output after January 19, 2001 under the Transition Formula adopted in D.96-12-028, or as subsequently modified.

INTERIM ORDER

IT IS ORDERED that effective January 19, 2001, Pacific Gas and Electric Company shall pay Qualifying Facilities who exercised their right to switch to

Power Exchange pricing based on the formula adopted in Decision 96-12-028, or as subsequently modified.

This order is effective today.

Dated February 22, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners